



Reprinted
February 22, 2006

ENGROSSED HOUSE BILL No. 1016

DIGEST OF HB 1016 (Updated February 21, 2006 4:55 pm - DI 106)

Citations Affected: IC 33-40; IC 35-33.

Synopsis: Pretrial fees. Authorizes a court to require a person charged with an offense for which the person has a prior conviction who is placed on bail and supervised by a probation officer or pretrial services agency to pay a pretrial services fee to defray the cost of supervision by the probation department or pretrial services agency if the person has the financial ability to pay the fee and the court finds by clear and convincing evidence that supervision by the probation department or pretrial services agency is necessary to ensure: (1) the defendant's appearance in court; or (2) the physical safety of another person or the community. Specifies that the pretrial services fee does not apply in city or town courts. Provides that the fee is divided between the county supplemental adult probation services fund and the county supplemental public defender services fund. Prohibits the bureau of motor vehicles from issuing or reinstating the license of a person who has not paid the person's pretrial services fee upon the person's conviction. Specifies that an order to pay the fee is immediately terminated if a defendant is acquitted or charges are dropped, and makes other changes relating to the collection and distribution of the fee. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2006.

Ayres, Ulmer, Foley, Cheney

(SENATE SPONSOR — BRAY)

January 4, 2006, read first time and referred to Committee on Courts and Criminal Code.
January 17, 2006, reported — Do Pass.
January 23, 2006, read second time, ordered engrossed. Engrossed.
January 26, 2006, read third time, passed. Yeas 95, nays 0.

SENATE ACTION

February 1, 2006, read first time and referred to Committee on Judiciary.
February 16, 2006, amended, reported favorably — Do Pass.
February 21, 2006, read second time, amended, ordered engrossed.

EH 1016—LS 6150/DI 106+



C
o
p
y

Reprinted
February 22, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1016

A BILL FOR AN ACT to amend the Indiana Code concerning
courts and court officers.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 33-40-3-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A supplemental
3 public defender services fund is established in each county. The fund
4 consists of amounts deposited under:

- 5 (1) section 9 of this chapter; **and**
6 (2) **IC 35-33-8-3.3**.

7 SECTION 2. IC 35-33-8-3.2, AS AMENDED BY P.L.10-2005,
8 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2006]: Sec. 3.2. (a) A court may admit a defendant to bail and
10 impose any of the following conditions to assure the defendant's
11 appearance at any stage of the legal proceedings, or, upon a showing
12 of clear and convincing evidence that the defendant poses a risk of
13 physical danger to another person or the community, to assure the
14 public's physical safety:

- 15 (1) Require the defendant to:
16 (A) execute a bail bond with sufficient solvent sureties;
17 (B) deposit cash or securities in an amount equal to the bail;

EH 1016—LS 6150/DI 106+



C
o
p
y

- (C) execute a bond secured by real estate in the county, where thirty-three hundredths (0.33) of the true tax value less encumbrances is at least equal to the amount of the bail; or
(D) post a real estate bond.

The defendant must also pay the fee required by subsection (d).

(2) Require the defendant to execute a bail bond by depositing cash or securities with the clerk of the court in an amount not less than ten percent (10%) of the bail. If the defendant is convicted, the court may retain all or a part of the cash or securities to pay fines, costs, fees, and restitution, if ordered by the court. A portion of the deposit, not to exceed ten percent (10%) of the monetary value of the deposit or fifty dollars (\$50), whichever is the lesser amount, may be retained as an administrative fee. The clerk shall also retain from the deposit under this subdivision the following:

- (A) Fines, costs, fees, and restitution as ordered by the court.
(B) Publicly paid costs of representation that shall be disposed of in accordance with subsection (b).
(C) In the event of the posting of a real estate bond, the bond shall be used only to insure the presence of the defendant at any stage of the legal proceedings, but shall not be foreclosed for the payment of fines, costs, fees, or restitution.
(D) The fee required by subsection (d).

The individual posting bail for the defendant or the defendant admitted to bail under this subdivision must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited under section 7 of this chapter or retained under subsection (b).

(3) Impose reasonable restrictions on the activities, movements, associations, and residence of the defendant during the period of release.

(4) Require the defendant to refrain from any direct or indirect contact with an individual.

(5) Place the defendant under the reasonable supervision of a probation officer, **pretrial services agency**, or other appropriate public official. **If the court places the defendant under the supervision of a probation officer or pretrial services agency, the court shall determine whether the defendant must pay the pretrial services fee under section 3.3 of this chapter.**

(6) Release the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall maintain reasonable contact with the defendant in order to assist

C
o
p
y



the defendant in making arrangements to appear in court and, where appropriate, shall accompany the defendant to court. The supervisor need not be financially responsible for the defendant.

(7) Release the defendant on personal recognizance unless:

(A) the state presents evidence relevant to a risk by the defendant:

(i) of nonappearance; or

(ii) to the physical safety of the public; and

(B) the court finds by a preponderance of the evidence that the risk exists.

(8) Impose any other reasonable restrictions designed to assure the defendant's presence in court or the physical safety of another person or the community.

(b) Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under IC 33-40-3.

(c) For purposes of subsection (b), "disposition" occurs when the indictment or information is dismissed or the defendant is acquitted or convicted of the charges.

(d) Except as provided in subsection (e), the clerk of the court shall:

(1) collect a fee of five dollars (\$5) from each bond or deposit required under subsection (a)(1); and

(2) retain a fee of five dollars (\$5) from each deposit under subsection (a)(2).

The clerk of the court shall semiannually remit the fees collected under this subsection to the board of trustees of the public employees' retirement fund for deposit in ~~the~~ the special death benefit fund. The fee required by subdivision (2) is in addition to the administrative fee retained under subsection (a)(2).

(e) With the approval of the clerk of the court, the county sheriff may collect the bail posted under this section. The county sheriff shall remit the bail to the clerk of the court by the following business day and remit monthly the five dollar (\$5) special death benefit fee to the county auditor.

(f) When a court imposes a condition of bail described in subsection (a)(4):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court

C
o
p
y



administration with the clerk.

SECTION 3. IC 35-33-8-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 3.3. (a) This section does not apply to a defendant charged in a city or town court.**

(b) If a defendant is charged with an offense that he or she has previously been convicted of and is placed under the supervision of a probation officer or pretrial services agency, the court may order the defendant to pay the pretrial services fee prescribed under subsection (e) if:

**(1) the defendant has the financial ability to pay the fee; and
(2) the court finds by clear and convincing evidence that supervision by a probation officer or pretrial services agency is necessary to ensure the:**

(A) defendant's appearance in court; or

(B) physical safety of the community or of another person.

(c) If a clerk of a court collects a pretrial services fee, the clerk may retain not more than three percent (3%) of the fee to defray the administrative costs of collecting the fee. The clerk shall deposit amounts retained under this subsection in the clerk's record perpetuation fund established under IC 33-37-5-2.

(d) If a clerk of a court collects a pretrial services fee from a defendant, upon request of the county auditor, the clerk shall transfer not more than three percent (3%) of the fee to the county auditor for deposit in the county general fund.

(e) The court may order a defendant who is supervised by a probation officer or pretrial services agency and charged with an offense to pay:

(1) an initial pretrial services fee of at least twenty-five dollars (\$25) and not more than one hundred dollars (\$100);

(2) a monthly pretrial services fee of at least fifteen dollars (\$15) and not more than thirty dollars (\$30) for each month the defendant remains on bail and under the supervision of a probation officer or pretrial services agency; and

(3) an administrative fee of one hundred dollars (\$100);

to the probation department, pretrial services agency, or clerk of the court if the defendant meets the conditions set forth in subsection (b).

(f) The probation department, pretrial services agency, or clerk of the court shall collect the administrative fee under subsection (e)(3) before collecting any other fee under subsection (e). Except for the money described in subsections (c) and (d), all money

**C
o
p
y**



collected by the probation department, pretrial services agency, or clerk of the court under this section shall be transferred to the county treasurer, who shall deposit fifty percent (50%) of the money into the county supplemental adult probation services fund and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1). The fiscal body of the county shall appropriate money from the county supplemental adult probation services fund:

- (1) to the county, superior, or circuit court of the county that provides probation services or pretrial services to adults to supplement adult probation services or pretrial services; and
- (2) to supplement the salary of:

- (A) an employee of a pretrial services agency; or

- (B) a probation officer in accordance with the schedule adopted by the county fiscal body under IC 36-2-16.5.

(g) The county supplemental adult probation services fund may be used only to supplement adult probation services or pretrial services and to supplement salaries for probation officers or employees of a pretrial services agency. A supplemental probation services fund may not be used to replace other probation services or pretrial services funding. Any money remaining in the fund at the end of a fiscal year does not revert to any other fund but continues in the county supplemental adult probation services fund.

(h) A defendant who is charged with more than one (1) offense and who is supervised by the probation department or pretrial services agency as a condition of bail may not be required to pay more than:

- (1) one (1) initial pretrial services fee; and
- (2) one (1) monthly pretrial services fee per month.

(i) A probation department or pretrial services agency may petition a court to:

- (1) impose a pretrial services fee on a defendant; or
- (2) increase a defendant's pretrial services fee;

if the financial ability of the defendant to pay a pretrial services fee changes while the defendant is on bail and supervised by a probation officer or pretrial services agency.

(j) An order to pay a pretrial services fee under this section:

- (1) is a judgment lien that, upon the defendant's conviction:
 - (A) attaches to the property of the defendant;
 - (B) may be perfected;
 - (C) may be enforced to satisfy any payment that is

**C
O
P
Y**



1 delinquent under this section; and
2 (D) expires;
3 in the same manner as a judgment lien created in a civil
4 proceeding;
5 (2) is not discharged by the disposition of charges against the
6 defendant or by the completion of a sentence, if any, imposed
7 on the defendant;
8 (3) is not discharged by the liquidation of a defendant's estate
9 by a receiver under IC 32-30-5; and
10 (4) is immediately terminated if a defendant is acquitted or if
11 charges against the defendant are dropped.
12 (k) If a court orders a defendant to pay a pretrial services fee,
13 the court may, upon the defendant's conviction, enforce the order
14 by garnishing the wages, salary, and other income earned by the
15 defendant.
16 (l) If a defendant is delinquent in paying the defendant's pretrial
17 services fee and has never been issued a driver's license or permit,
18 upon the defendant's conviction, the court may order the bureau
19 of motor vehicles to not issue a driver's license or permit to the
20 defendant until the defendant has paid the defendant's delinquent
21 pretrial services fee. If a defendant is delinquent in paying the
22 defendant's pretrial services fee and the defendant's driver's
23 license or permit has been suspended or revoked, the court may
24 order the bureau of motor vehicles to not reinstate the defendant's
25 driver's license or permit until the defendant has paid the
26 defendant's delinquent pretrial services fee.
27 (m) In addition to other methods of payment allowed by law, a
28 probation department or pretrial services agency may accept
29 payment of a pretrial services fee by credit card (as defined in
30 IC 14-11-1-7(a)). The liability for payment is not discharged until
31 the probation department or pretrial services agency receives
32 payment or credit from the institution responsible for making the
33 payment or credit.
34 (n) The probation department or pretrial services agency may
35 contract with a bank or credit card vendor for acceptance of a
36 bank or credit card. However, if there is a vendor transaction
37 charge or discount fee, whether billed to the probation department
38 or pretrial services agency, or charged directly to the account of
39 the probation department or pretrial services agency, the
40 probation department or pretrial services agency may collect a
41 credit card service fee from the person using the bank or credit
42 card. The fee collected under this subsection is a permitted

C
o
p
y



1 additional charge to the fee or fees the defendant may be required
2 to pay under subsection (e).

3 (o) The probation department or pretrial services agency shall
4 forward a credit card service fee collected under subsection (n) to
5 the county treasurer in accordance with subsection (f). These funds
6 may be used without appropriation to pay the transaction charge
7 or discount fee charged by the bank or credit card vendor.

**C
o
p
y**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1016, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

ULMER, Chair

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1016, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 33-40-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. A supplemental public defender services fund is established in each county. The fund consists of amounts deposited under:

(1) section 9 of this chapter; and

(2) IC 35-33-8-3.3."

Page 3, line 40, after "(a)" insert "**This section does not apply to a defendant charged in a city or town court.**

(b)".

Page 4, line 1, delete "(d)" and insert "(e)".

Page 4, line 8, delete "(b)" and insert "(c)".

Page 4, line 13, delete "(c)" and insert "(d)".

Page 4, line 14, delete "and the defendant is:" and insert ",".

Page 4, delete lines 15 through 18.

Page 4, line 19, delete "(2) not charged in a city or town court,".

Page 4, run in lines 14 and 19.

Page 4, line 23, delete "(d)" and insert "(e)".

Page 4, line 35, delete "(a)" and insert "(b)".

Page 4, delete line 36.

Page 4, line 37, delete "apply to a defendant charged in a city or town court.", begin a new paragraph and insert "(f)".

Page 4, line 39, delete "(d)(3)" and insert "(e)(3)".

Page 4, line 40, delete "(d)" and insert "(e)".

C
o
p
y



Page 4, line 40, delete "All" and insert **"Except for the money described in subsections (c) and (d), all"**.

Page 5, line 1, after "deposit" insert **"fifty percent (50%) of"**.

Page 5, line 2, after "fund" delete "." and insert **"and fifty percent (50%) of the money into the county supplemental public defender services fund (IC 33-40-3-1)."**.

Page 5, delete lines 12 through 31.

Page 5, line 32, delete "or local".

Page 5, line 39, delete "or local".

Page 6, line 13, after "that" insert **", upon the defendant's conviction"**.

Page 6, line 23, delete "and".

Page 6, line 25, delete "." and insert **"; and**

(4) is immediately terminated if a defendant is acquitted or if charges against the defendant are dropped."

Page 6, line 27, after "may" insert **", upon the defendant's conviction,"**.

Page 6, line 30, after "permit," insert **"upon the defendant's conviction,"**.

Page 7, line 14, delete "(d)" and insert **"(e)"**.

Page 7, line 17, delete "or city or town fiscal officer".

Page 7, line 18, delete "(e) or".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1016 as printed January 18, 2006.)

BRAY, Chairperson

Committee Vote: Yeas 7, Nays 1.

SENATE MOTION

Madam President: I move that Engrossed House Bill 1016 be amended to read as follows:

Page 4, line 6, after "offense" insert **"that he or she has previously been convicted of"**.

(Reference is to EHB 1016 as printed February 17, 2006.)

NUGENT

EH 1016—LS 6150/DI 106+



C
O
P
Y